

REMARKS/ARGUMENTS

Claims 1-9 are present in this application. By this Amendment, claims 1 and 7-9 have been amended. Reconsideration in view of the above amendments and the following remarks is respectfully requested.

Claims 1 and 7-9 were objected to due to the use of “an other party” in the claims. Applicant acknowledges with appreciation the Examiner’s suggestion to rephrase this language to define “another party,” however Applicant believes that such language may be awkward in later referencing “the another party.” Claims 1 and 7-9 have been rather amended herein to reference a “vendor.” Support for this amendment can be found throughout the specification and, in particular, for example, page 17, lines 14-25. Withdrawal of the objection is requested.

Claims 1 and 7-9 were rejected under 35 U.S.C. §112, second paragraph. The Office Action contends that there is insufficient antecedent basis for the phrase “participant to an other party” in the claims. Applicant respectfully submits, however, that this phrase does not include any language requiring antecedent basis. The preambles of each of claims 1 and 7-9 reference “a participant” and later reference “an other party.” It is not clear which word or phrase the Examiner is requiring antecedent basis. Clarification on this rejection is respectfully requested. As noted above, reference to “an other party” has been amended herein to reference a “vendor.” Although this amendment does not serve to address a problem regarding antecedent basis, Applicant assumes that this amendment will obviate the Examiner’s concern.

The Office Action further contends that use of the phrases “and if so” and “wherein if not” render the claims “vague and unclear.” Without conceding this contention, claims 7 and 9 have been amended for clarity.

Withdrawal of the rejection is respectfully requested.

Claims 1-9 were rejected under 35 U.S.C. §103(a) over U.S. Patent No. 6,493,683 to David et al. This rejection is respectfully traversed.

At the outset, Applicant respectfully submits that the David patent is not prior art relative to at least claim 9, which is fully supported by the parent application from which this application claims priority and the provisional application from which the parent application claims priority. As referenced on page 1 of the present specification, this application is a CIP of U.S. Patent Application Serial No. 09/567,589 filed May 10, 2000, which claims the benefit of U.S. Provisional Patent Application Serial No. 60/133,687 filed May 10, 1999 (a substitute Declaration referencing the full priority chain is filed concurrently herewith). The David patent was filed after this priority date on August 23, 1999. For this reason alone, Applicant submits that the rejection of at least claim 9 is misplaced.

Moreover, step (c) of claim 1 provides that the qualifying system reserves a portion of the consumer funding account according to a transaction parameter The Office Action contends that the David patent discloses this subject matter, referring to column 4, lines 48-51. This section in David, however, merely provides that customers must deposit assets or provide sufficient information to receive a credit rating for a particular amount. This teaching is irrelevant to a system that reserves a portion of an existing account.

The qualifying method of the invention defined in claim 1 prevents the participant from using the same funds to qualify for multiple transactions. In the context of the credit rating, since a credit line in the David patent is not part of a customer account and is not reserved by a qualifying system according to a transaction parameter, it is possible that a customer's credit rating in the David patent could be utilized for multiple transactions that together the customer is not qualified to enter. Additionally, the depositing of funds or other assets with a custodian is

entirely distinguishable from the qualifying method of claim 1, where a consumer account is administered by the qualifying system, and the qualifying system reserves a portion of the existing account to qualify the participant. The David system in contrast requires the customer to actively deposit funds or other assets with a custodian.

Claim 7 defines a computer system for effecting qualifying of a participant in such a transaction, and claim 8 defines a computer program embodied on a computer-readable medium for qualifying a participant. Claim 9 similarly defines a method of qualifying a participant in a transaction. The subject matter of each of these independent claims similarly requires structure/steps for the qualifying reserving a portion of an existing account according to a transaction parameter. Since this subject matter is lacking in the David patent as discussed above, Applicant submits that the rejection of these claims is also misplaced.

Claim 9 additionally defines in step (b), a step of determining whether the participant has established a consumer funding account, wherein if the participant has not established the consumer funding account, the qualifying system provides the participant an opportunity to establish the consumer funding account The Office Action contends that David discloses this subject matter with reference to column 2, line 64 - column 3, line 6; column 3, line 55 - column 4, line 13; and column 4, lines 43-51. These sections in the David patent, however, relate to the custodian verification that a customer has assets available to meet an order and reference the customer's registration with a server and a custodian. These sections do not address the system's response when a customer enters a transaction without registration. The David patent rather discusses this consequence in column 6, lines 25-35. In particular, David provides that "if the customer is not a registered user, his request for access is rejected." David thus also lacks step (b) of claim 9.

On page 5 of the Office Action, the Examiner recognizes that David lacks a disclosure of the system as a qualifying system. The Office Action concludes, however, that it would have been obvious “to have a qualifying system and to modify in David because such a modification would allow David’s system to have a qualification process to include the deposit of funds or other assets with a custodian prior to any trade by the customer with the server receiving a confirmation through the custodian that the customer has the right to sell and that the customer has the positive sufficient assets to purchase the funds.” Although this conceptually is peripherally related to the subject matter of the invention, the method/system defined in the claims embodies a qualifying system that administers a consumer account and reserves a portion of the account according to a transaction parameter. The confirmation of assets etc. disclosed in the David patent neither teaches nor remotely suggests any such qualifying system that reserves a portion of an account. For these reasons also, Applicant respectfully submits that the rejection is misplaced.

With regard to the dependent claims, Applicant submits that these claims are allowable at least by virtue of their dependency on an allowable independent claim.

Reconsideration and withdrawal of the rejection are respectfully requested.

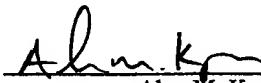
In view of the foregoing amendments and remarks, Applicant respectfully submits that the claims are patentable over the art of record and that the application is in condition for allowance. Should the Examiner believe that anything further is desirable in order to place the application in condition for allowance, the Examiner is invited to contact Applicant's undersigned attorney at the telephone number listed below.

Prompt passage to issuance is earnestly solicited.

UNDERSTEIN
Appl. No. 09/617,065
April 12, 2006

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: 

Alan M. Kagen
Reg. No. 36,178

AMK:jls
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100